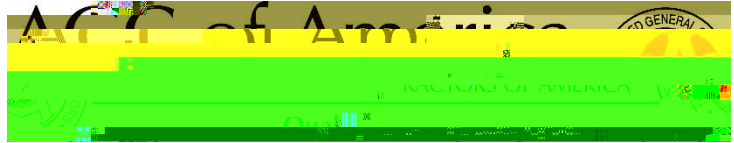


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April 1, 2016

VIA ELECTRONIC SUBMISSION: <http://www.regulations.gov>

Ms. Bernadette Wilson  
Acting Executive Officer  
Executive Secretariat  
Equal Employment Opportunity Commission (EEOC)  
131 M Street NE  
Washington, DC 20507

**Re: Proposed Revision of the Employer Information Report (EEO-1) [RIN 3046-0007]**

Dear Ms. Wilson:

On behalf of the Associated General Contractors of America (hereinafter "AGC"), let me thank you for the opportunity to submit the following comments on the Equal Employment Opportunity Commission's (hereinafter "EEOC" or "the agency") information collection and comment request (hereinafter "proposal"). The proposal intends to revise the Employer Information Report (hereinafter "EEO-1") to collect data on employees' W-2 earnings and hours-worked. The proposal was published in the *Federal Register* on February 1, 2016.

AGC is the leading association for the construction industry, representing more than 25,000 firms, including over 6,500 of America's leading general contractors and over 8,800 specialty contracting firms. In addition, more than 10,400 service providers and suppliers are associated with AGC through a nationwide network of chapters. These firms, both union and open shop, engage in the construction of buildings, shopping centers, factories, industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, municipal utilities and other improvements to real property. These firms regularly perform construction services for private owners as well as government agencies. Many are also small and closely held businesses.

### **The Agency's Collection of Wage Data is Not Needed**

#### ***Agency data show lack of need for collection of wage data***

The proposal references wage discrimination as the basis of the need to collect compensation data from employers in accordance with the EEO-

Federal Contract Compliance Program's (hereinafter "OFCCP") effort to work inter-agency to create a process that avoids employer redundancy. However, AGC does not believe new wage or hours-worked reporting and disclosure requirements for employers are necessary or reasonable.

The EEOC's own data support AGC's position that there is no need for the eradication of wage discrimination in construction because



for a wide variety of factors used to determine employee compensation such as education, training, experience, industry accreditations, tenure, attitude and job assignment, to name a few. For example, two employees performing the same job may receive different rates of pay simply because one worker has more tenure than the other, or perhaps one has a four-year degree and the other one does not. In construction, job assignments are also considered when determining compensation for an employee. For example, two project managers may be compensated differently for the reasons indicated above, or because the value and responsibility of the contract he or she is managing may vary greatly. For example, it would not be uncommon to see a large difference in compensation between a project manager for a company who is responsible for an \$80 million project versus a project manager for the same company who is responsible for managing a \$5 million project.

In these scenarios, employees performing the same or similar jobs will fall within a particular EEO-1 category but under different pay bands without an explanation for the difference. As a result, a review of the data could lead to an erroneous analysis by wage analysts.

### **The EEOC's Collection of Hours-worked Data Is Not Needed and Should Not Be Considered**

The proposal states that the revised EEO-1 report will collect the total number of hours worked by employees included in each EEO-1 pay band cell. While the EEOC specifically asked for employer input with respect to how to report hours-worked for salaried employees, no regard was taken with respect to how reporting would occur for *any* employees, regardless of overtime eligibility status. The proposed new EEO-1 report does not, at all, address hours worked for hourly *or* salaried employees. Therefore, it would be inappropriate for the agency to consider changes to a form that have not been evaluated by stakeholders for public comment.

As a result, AGC kindly asks the EEOC to withdraw consideration for including hours worked on the revised EEO-1 form until at such time it can provide a sample form for public review and comment showing how this information would be provided by employers and used by the EEOC.

### ***If Re-evaluated at a Later Date, Hours-worked Data for Salaried Workers Should Be Excluded***

The EEO-1 job categories relevant to the construction industry include job classifications that may have

## **Additional Considerations Should the Proposal be Unnecessarily Implemented**

*Aggregate data are not useful or transparent, yet transparent data place employers proprietary information at risk*

Should this proposal be unnecessarily implemented, AGC would support and appreciates the agency's decision to use of the current EEO-1 form to collect additional data from employers as this form is already familiar to them. It is clear to AGC that the decision to use the EEO-1 form and its job categories was selected as a means of making the collection of such data less burdensome for employers. However, AGC struggles to understand the value and utility of data placed in such broad categories. With the use of broad job categories and wide pay bands, coupled with the release of only aggregate data, how will the public know what data are used to establish the summary data to be released by the either the EEOC or OFCCP? Theoretically, interested parties should be able to see raw data for the purposes of transparency, but that in itself creates privacy concerns for contractors – particularly small contractors – and their employees. Furthermore, the use of such broad job categories will result in

Specifically, AGC requests that language be inserted directly onto the revised form that boldly states that neither contractors with only federally assisted contracts nor federal subcontractors at the second